

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart") respectfully submits the following comments in response to the Federal-State Joint Board's Recommended Decision^{1/} concerning the implementation of the universal service directives in Section 254 of the Telecommunications Act of 1996.^{2/} Although PageMart supports many of the provisions set forth in the Recommended Decision, it is concerned that certain aspects of the decision and/or its implementation could have a detrimental impact on paging providers and on the competitiveness of the wireless industry as a whole. PageMart's comments focus specifically on those aspects of the Recommended Decision about which it has the greatest concern.

In particular, PageMart submits that: (1) Section 332(c)(3) of the 1934 Act exempts commercial mobile radio service ("CMRS") providers from state imposition of

^{1/} Federal State Joint Board Recommended Decision on Universal Service, CC Docket No. 96-45 (released Nov. 8, 1996) (the "Recommended Decision").

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, (1996) (the "1996 Act") amending the Communications Act of 1934, 47 U.S.C. § § 151 et seq. ("1934 Act").

universal service support requirements; (2) the Commission should work to minimize the overall size of the universal service fund; (3) contributions to the universal service fund should be based on interstate and intrastate revenues; (4) the Commission should consider carefully the impact of universal service directives on carriers with lower profit margins as it develops the universal service funding mechanism; and (5) equitable considerations mandate that contributions to the universal service fund be assessed based on a forward-looking economic formula which takes into account the potential for carriers to recover subsidies from the fund.

**I. NOTWITHSTANDING THE JOINT BOARD'S CONCLUSION,
FEDERAL PREEMPTION OF STATE REGULATION UNDER 47 U.S.C.
332(c)(3) EXEMPTS CMRS CARRIERS FROM STATE SUPPORT
PROGRAMS.**

As has been argued by numerous other commenters in the proceeding which led to the Recommended Decision,^{3/} under Section 332(c)(3) of the 1934 Act, commercial mobile radio services ("CMRS") (including paging services) primarily are interstate in nature and should only be required to contribute to the federal universal service fund. Congress acknowledged the interstate nature of these services when it established, under section 332(c), a comprehensive federal regulatory structure for CMRS which preempts state regulation. This conclusion does not require a broad reading of the relevant provisions of the 1996 Act; section 332(c)(3) specifically limits state universal service obligations to CMRS carriers which are "a replacement for land line telephone exchange service for a substantial

^{3/} See, e.g., Comments of the Personal Communications Industry Association dated April 12, 1996 at 9; Comments of Reed, Smith, Shaw and McClay dated April 12, 1996 at 2.

portion of the telephone land line exchange within such State."^{4/} Under this provision, state funding obligations can be imposed on CMRS providers only to the extent that they substitute for land line telephone services in a given state. The Joint Board disregarded this plain language when it dismissed industry concerns about inclusion in state universal service support mechanisms.

If the Commission adopts a mechanism for funding universal service that requires contributions at the state level as well as the federal level, CMRS carriers will be taxed twice on the same revenue. Adherence to the plain meaning of Section 332(c)(3) and the clear Congressional intent in drafting this statute would prevent this highly inequitable result. At a minimum, the Commission should concern itself with eliminating this potential double tax on wireless telecommunications providers.

II. CONTRIBUTIONS TO THE FEDERAL FUND SHOULD BE BASED ON INTERSTATE REVENUES AND INTRASTATEREVENUES.

PageMart urges the Commission to consider gross interstate and intrastate revenues of telecommunications carriers in determining required contributions to the federal universal service fund. A calculation of contributions based on both interstate and intrastate revenues will ensure that the largest possible group of carriers contribute to the fund, thereby lessening the potential burden on smaller carriers.

Such a calculation also would have the advantage of being relatively simple to administer and would minimize opportunities for carriers to avoid contributions to the fund. If the assessment is limited to interstate revenues, and state assessments are lower or non-

^{4/} 47 U.S.C. § 332(c)(3)(i).

existent, carriers with the flexibility to characterize their income in either category will have a strong incentive to reclassify revenues as intrastate, limiting their contributions to the federal fund. It is likely that such carriers will exploit the situation, leaving predominately interstate carriers (such as paging services) to shoulder a disproportionate burden.

III. THE COMMISSION SHOULD BE GUIDED BY THE JOINT BOARD'S "COMPETITIVE NEUTRALITY" PRINCIPLE AS IT DESIGNS A UNIVERSAL SERVICE FUND THAT IS CAREFULLY TARGETED AND NARROWLY DRAWN.

As it determines the scope of universal services support and decides which carriers will contribute to support mechanisms, as well as the basis for assessing contributions, the Commission should be guided by the principle of "competitive neutrality" suggested by the Joint Board. A large, all-encompassing fund, providing subsidies for a wide variety of services, would impose a relatively higher burden on industries with a low profit margins and ultimately would constrain growth and technological development in the telecommunications industry.

In addition, service providers that compete largely on the basis of price in an elastic market, and in particular providers of paging services, will have difficulty maintaining their consumer base if they are forced to increase prices significantly as a result of payments to the universal service fund.^{5/} Current and future determinations of the scope of universal service should be developed with an eye towards avoiding unduly burdensome requirements on sectors with low profit margins. As was suggested by Commissioner Schoenfelder in her

^{5/} In contrast, other telecommunications carriers, in particular the local exchange carriers, do not face a price-elastic market for their services.

separate statement accompanying the Recommended Decision, an unnecessarily large fund is likely to harm competition, and as a result ultimately would detrimentally affect the widespread availability of telecommunications services.^{6/} To the extent that the universal service fund becomes excessively large, the Commission risks a significant increase in the cost of providing telecommunications services generally, with a consequent direct impact on the availability of those services to low-income groups and others. Several specific recommendations flow from this basic premise.

First, the Commission should limit the Joint Board's ambitious proposal for providing discounts to eligible schools and libraries on all telecommunications services. More specifically, the Joint Board suggests that internal connections, as well as the installation and maintenance of certain facilities, be provided at a discount. Inside wiring, however, is not a telecommunications service; this recommendation inappropriately expands the size of the universal services support fund in contravention of the statute.^{7/} The Commission should consider the impact of this proposal on smaller carriers in the telecommunications industry and not include internal connections as a discounted service. In addition, the Commission should require schools and libraries to seek competitive bids for the provision of all universal services, a provision which will further limit the growth of the fund.

^{6/} Recommended Decision, Separate Statement of FCC Commissioner Laska Schoenfelder at 8.

^{7/} "All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries. . . ." 47 U.S.C. § 254(h)(1)(B).

Second, PageMart supports the Joint Board's recommendation that universal service support be provided for a single connection to a customer's primary residence. Such an assessment will directly serve the goals of universal service (i.e., ensuring that low-income persons have access to telecommunications services) while at the same time helping to limit the overall size of the fund. The Commission also should explore alternative mechanisms such as competitive bidding and vouchers that may help reduce universal service funding needs. These proposals serve the joint goals of ensuring reasonable cost services to the public and maintaining a diversity of offerings in telecommunications services for the public.

Likewise, in developing a cost proxy model for providing service in high-cost areas, the Commission should adhere to the Joint Board's recommendation and use the forward-looking economic costs of developing and operating the network facility and functions used to provide designated services. In contrast, the use of embedded costs would be likely to include many unnecessary costs incurred under rate of return regulation, and would be likely to increase the size of the fund and allow recipients of universal service to overestimate the cost of these services. In contrast, use of forward-looking costs provide incentives to minimize the size of the fund.

The Joint Board downplays the necessity for additional rules to prevent potential fraud and misuse of support funds. PageMart urges the Commission to reconsider this position. Opportunistic behavior on the part of some carriers would only exacerbate the burden on smaller companies and diminish their ability to compete. The potential for fraud and for cross-subsidization of universal services with competitive services increases with the

size of the fund, but can be minimized by such measures as narrow targeting of covered services and a limitation on the size of the fund.

III. EQUITY MANDATES THAT CARRIERS THAT DO NOT RECEIVE UNIVERSAL SERVICE SUPPORT SUBSIDIES BE ASSESSED AT A LOWER RATE.

The Joint Board recommended that, with a few narrowly drawn exceptions, only those carriers providing all services defined as universal service should be able to receive universal service support. At present, messaging providers like PageMart do not have the capability to provide all of the services encompassed by this definition.^{8/} Equity dictates that carriers that are unable to draw from the universal service fund should not have to contribute the same proportion of their earnings as companies that will be able to draw upon the fund. This is in direct contravention to the mandate in Section 254(d) of the 1996 Act that requires carriers to contribute on an "equitable and nondiscriminatory basis" to the universal service mechanism.^{9/}

PageMart agrees with the Joint Board's recommendation that contributions be based on gross telecommunications revenues net of payments to other carriers. However, equity mandates that any contributions calculation be weighted to take into account the potential for the carrier to recover subsidies from the universal service fund.

^{8/} E.g., voice grade access to the public switched network, with the ability to place and receive calls; touch-tone or dual tone multi-frequency signaling or its functional equivalent; single party service; access to emergency services; access to operator services; access to interexchange services; and access to directory assistance. Recommended Decision ¶¶ 36-70.

^{9/} 47 U.S.C. § 254(d).

For example, one-way messaging and paging carriers are not eligible for subsidies from the fund because their services do not fall within the list of "core" or "designated" services eligible for support under the fund.^{10/} To require such carriers to contribute the fund on the same basis as do carriers that are eligible to draw subsidies from the fund would be highly inequitable and inconsistent with the Recommended Decision's principle of "competitive neutrality."^{11/} Specifically, messaging providers compete not only with each other, but with other wireless and wireline services. If the Commission's rules allow certain competitors to draw subsidies from the fund (and thereby lower their costs), while messaging carriers cannot draw from, but must pay into the fund, the impact of the universal service mechanism will be far from competitively neutral. Indeed, paging and other messaging providers will be forced into a situation where they will not only be paying into a fund from which they can derive no direct benefits, they essentially will be required to subsidize their competitors who are able to draw from the fund.

PageMart urges the Commission to avoid the creation of such a skewed competitive situation by allowing carriers that cannot benefit from the fund to contribute at a reduced level. PageMart suggests that the appropriate contribution level for paging carriers is 50% of the total gross telecommunications revenues that are subject to the contribution formula.


^{10/} Recommended Decision ¶ 27.

^{11/} Id. ¶ 3.

CONCLUSION

PageMart strongly supports the underlying goals of establishing a universal service mechanism that will ensure access to affordable telecommunications services in a manner that enhances, rather than distorts, competition. PageMart is concerned, however, that certain aspects of the Recommended Decision could work to exacerbate inequities and anti-competitive activities, and urges the Commission to ensure that implementation of the universal service mechanism is effected in a manner consistent with the concept of "competitive neutrality."

Respectfully submitted,


Phillip L. Spector
Susan E. Ryan
Monica A. Leimone
PAUL, WEISS, RIFKIND
WHARTON & GARRISON
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
(202) 223-7340

December 19, 1996

Attorneys for PageMart, Inc.

CERTIFICATE OF SERVICE

I, Yasmin Beckford, hereby certify that copies of the Comments of PageMart, Inc. were served by first class U.S. Mail, postage-prepaid or, hand-delivery upon the following:

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, D.C. 20554

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102

The Honorable Rachelle B. Chong,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 844
Washington, D.C. 20554

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, D.C. 20554

Lisa Boehley
Federal Communications Commission
2100 M Street, N.W. - Room 814
Washington, D.C. 20554

The Honorable Julia Johnson,
Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 East Capitol Street
Pierre, SD 57501-5070

The Honorable Kenneth McClure,
Commissioner
Missouri Public Service Commission
301 West High Street, Suite 530
Jefferson City, MO 65101

Deonne Bruning
Nebraska Public Service Commission
300 The Atrium
1200 N Street, P.O. Box 94927
Lincoln, NE 68509-4927

The Honorable Sharon L. Nelson, Chairman
Washington Utilities and Transportation
Commission
P.O. Box 47250
Olympia, WA 98504-7250

James Casserly
Federal Communications Commission
Office of Commissioner Ness
1919 M Street, N.W. - Room 832
Washington, D.C. 20554

The Honorable Laska Schoenfelder,
Commissioner
South Dakota Public Utilities Commission
State Capitol, 500 East Capitol Street
Pierre, SD 57501-5070

Bryan Clopton
Federal Communications Commission
2100 M Street, N.W. - Room 8615
Washington, D.C. 20554

Robert Loube
Federal Communications Commission
2100 M Street, N.W. - Room 8914
Washington, D.C. 20554

Samuel Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AR 72203-0400

Emily Hoffnar
Federal Communications Commission
2100 M Street, N.W. - Room 8623
Washington, D.C. 20554

L. Charles Keller
Federal Communications Commission
2100 M Street, N.W. - Room 8918
Washington, D.C. 20554

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th Street, N.W. - Suite 500
Washington, D.C. 20005

Tejal Mehta
Federal Communications Commission
2100 M Street, N.W. - Room 8625
Washington, D.C. 20554

John Clark
Federal Communications Commission
2100 M Street, N.W. - Room 8619
Washington, D.C. 20554

Irene Flannery
Federal Communications Commission
2100 M Street, N.W. - Room 8922
Washington, D.C. 20554

Daniel Gonzalez
Office of Commissioner Chong
Federal Communications Commission
1919 M Street, N.W. - Room 844
Washington, D.C. 20554

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Lori Kenyon
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

David Krech
Federal Communications Commission
2025 M Street, N.W. - Room 7130
Washington, D.C. 20554

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Terry Monroe
New York Public Service Commission
3 Empire Plaza
Albany, New York 12223

John Morabito
Deputy Division Chief, Accounting and
Audits
Federal Communications Commission
2000 L Street, N.W. - Room 812
Washington, D.C. 20554

Mark Nadel
Federal Communications Commission
2100 M Street, N.W. - Room 8916
Washington, D.C. 20554

Pamela Szymczak
Federal Communications Commission
2100 M Street, N.W. - Room 8912
Washington, D.C. 20554

Lee Palagyi
Washington Utilities and Transportation
Commission
1300 South Evergreen Park Dr., S.W.
lympia, WA 98504

Barry Payne
Indiana Office of
the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208

James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
P.O. Box 684
Washington, D.C. 20044-0684

Diane Law
Federal Communications Commission
2100 M Street, N.W. - Room 8920
Washington, D.C. 20554

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399

John Nakahata
Federal Communications Commission
Office of the Chairman
1919 M Street, N.W. - Room 814
Washington, D.C. 20554

Lori Wright
Federal Communications Commission
2100 M Street, N.W. - Room 8603
Washington, D.C. 20554

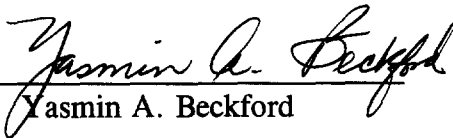
Kimberly Parker
Federal Communications Commission
2100 M Street, N.W. - Room 8609
Washington, D.C. 20554

Jeanine Poltronieri
Federal Communications Commission
2100 M Street, N.W. - Room 8924
Washington, D.C. 20554

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Gary Seigel
Federal Communications Commission
2100 M Street, N.W. - Room 812
Washington, D.C. 20554

Richard Smith
Federal Communications Commission
2100 M Street, N.W. - Room 8605
Washington, D.C. 20554


Yasmin A. Beckford